

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN MONTUE,

Petitioner,

No. CIV S-04-1697 FCD JFM P

vs.

WARDEN SCHWARTZ,

Respondent

ORDER

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This matter has been remanded to this court from the United States Court of Appeals for the Ninth Circuit for the limited purpose of granting or denying a certificate of appealability. See 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The certificate of appealability must “indicate which specific issue or issues satisfy” the requirement. 28 U.S.C. § 2253(c)(3).

A certificate of appealability should be granted for any issue that petitioner can demonstrate is “‘debatable among jurists of reason,’” could be resolved differently by a different

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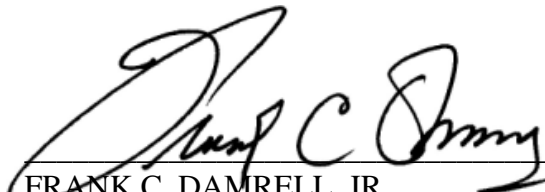
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1 court, or is “adequate to deserve encouragement to proceed further.” Jennings v. Woodford,
2 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).¹

3 Petitioner has made a substantial showing of the denial of a constitutional right in
4 the following issue presented in the instant petition: Whether petitioner’s right to due process
5 was violated by the California Board of Prison Terms’ March 13, 2002 decision to deny him a
6 parole date.

7 Accordingly, IT IS HEREBY ORDERED that a certificate of appealability is
8 issued in the present action.

9 DATED: September 28, 2010.

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11 FRANK C. DAMRELL, JR.
12 UNITED STATES DISTRICT JUDGE
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25 ¹ Except for the requirement that appealable issues be specifically identified, the
26 standard for issuance of a certificate of appealability is the same as the standard that applied to
issuance of a certificate of probable cause. Jennings, at 1010.